

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

NAVIGATOR HEARTLAND
GREENWAY LLC,

Plaintiff,

v.

IOWA UTILITIES BOARD, A DIVISION
OF THE DEPARTMENT OF COMMERCE,
STATE OF IOWA,

Defendant.

CASE NO. EQCE088024

**PLAINTIFF'S UNOPPOSED MOTION TO
STAY THESE PROCEEDINGS**

COMES NOW Plaintiff, Navigator Heartland Greenway LLC (“Navigator”), by and through its undersigned counsel, hereby submits the following Unopposed Motion to Stay These Proceedings (“Motion”), and in support of the same, states:

1. In this action, Navigator is seeking an injunction pursuant to Iowa Code §§ 22.5 and 22.8 to protect the confidentiality of its mailing lists, which were requested to be disclosed pursuant to open records requests under the Iowa Open Records Act, Iowa Code chapter 22, submitted to Defendant, the Iowa Utilities Board (the “IUB” or “Board”).¹

2. In Iowa, the IUB has primary jurisdiction over the siting of hazardous liquids pipelines, and a company proposing to build such a pipeline must obtain a permit from the Board under Iowa Code chapter 479B.²

¹ See Iowa Utilities Board, *In re: Navigator Heartland Greenway LLC*, Notice of Records Request, Docket No. HLP-2021-0003 (Aug. 24, 2022).

² Navigator’s proposal is pending before the Board in Docket No. HLP-2021-0003. See Iowa Utilities Board, *In re: Navigator Heartland Greenway LLC*, Docket No. HLP-2021-0003, available at <https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0003>.

3. Navigator has developed a proposal to build and operate a large-scale carbon capture pipeline system spanning approximately 1,300 miles across five states in the Midwest that will capture carbon dioxide from local facilities before it reaches the atmosphere, convert it to a liquid form, and transport it via pipeline to a permanent underground sequestration site and/or off-take facilities in Iowa for commercial/industrial use.

4. Pursuant to Iowa Code chapter 479B and the Board's administrative rules implementing the statute, 199 Iowa Administrative Code chapter 13, the first step in seeking a permit for a carbon capture infrastructure project of this nature is to hold a public informational meeting in each county where the pipeline is proposed to be constructed and operated, and notice of these meetings must be sent via certified mail to "persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements." 199 Iowa Admin. Code 13.2(5) (implementing Iowa Code § 479B.4).

5. Notably, however, nothing in the statute nor the Board's rules requires or contemplates public filing of the list of persons on which the mailing was based.

6. While mailing lists are not required to be filed under chapter 479B of the Iowa Code or the IUB's administrative rules, the Board entered orders on December 16, 2021 and December 28, 2021 in all of its then-open hazardous liquid pipeline dockets, including *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001,³ requiring hazardous liquid pipeline companies, like Summit Carbon Solutions, LLC ("Summit") and Navigator, to file their mailing lists.

³ See Iowa Utilities Board, *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, available

7. However, the December 16, 2021 order expressly allowed for the confidential treatment of the lists, and the December 28, 2021 order confirmed that the Board would “withhold from public inspection all materials subject to such request” until a final ruling from the Board, which would come after other litigation was resolved.

8. The litigation referenced in the December 28, 2021 IUB order is *Summit Carbon Solutions, LLC v. Iowa Utils. Bd, et al.*, Polk County, Iowa Case No. CVCV062900 (the “Summit Action”), which involves the confidentiality of Summit’s mailing lists in light of an open records requests under the Iowa Open Records Act, Iowa Code chapter 22.

9. On August 12, 2022, the Iowa District Court for Polk County in the Summit Action entered the Order Denying Motion for Permanent Injunction (the “Order”).

10. Notably, however, on September 2, 2022, Summit filed an appeal and supersedeas bond with the Iowa Supreme Court, thus staying the District Court’s Order.

11. On August 24, 2022, Navigator received a letter from the Board, informing Navigator that the IUB had been sent a series of public records requests, pursuant to Iowa Code chapter 22, from multiple parties demanding the release of the full landowner lists. Despite the December 28, 2021 order stating that all mailing list materials filed by Navigator would be held confidential, the Board instead said that, pursuant to the provisions of IUB rules 1.9(5) and 1.9(8), it would withhold the informational meeting mailing lists from public inspection for a period of 14 days, starting from August 24, 2022, to allow Navigator the opportunity to obtain injunctive relief in a District Court of the State of Iowa to prevent the disclosure of these materials, or such portion of the materials as may be designated by the Court.

at <https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0001>.

12. Consequently, on September 7, 2022, Navigator filed its Petition for Temporary and Permanent Injunction to initiate this action.

13. On September 16, 2022, the Court entered a temporary injunction preventing disclosure of any of the information sought in those open records requests made by others.

14. Given the overlap of issues between this action and the Summit Action, Navigator now respectfully requests that the current action be stayed pending the resolution of the appeal of the Summit Action.

15. This Court has the inherent power “to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Chicoine v. Wellmark, Inc.*, 894 N.W.2d 454, 460 (Iowa 2017) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

16. This Court should stay this matter pending resolution of the Summit Action, as it is in the interests of judicial economy and fairness to do so. *Thomas v. Timonds*, 179 Iowa 509, 159 N.W. 881, 884 (1916) (upholding stay of claim to set aside real estate conveyance in probate action where resolution of related will contest claim would be determinative of real estate conveyance claim); *In re B.B.*, 516 N.W.2d 874, 877 (Iowa 1994) (holding issue is moot if it no longer presents a justiciable controversy because it has become academic).

17. If this case were to proceed, the parties and this Court would spend significant time, money, and resources litigating some issues that the Summit Action could ultimately render a nullity or irrelevant. *Coyne & Delany Co. v. G. W. Onthank Co.*, 90 F. Supp. 505, 506 (S.D. Iowa 1950) (finding a stay appropriate pending the outcome of separate case involving related issues that would “aid materially” in the court’s disposition and thereby reduce the costs

of litigation).

18. Considerations of judicial economy, cost of the parties, and efficient claim resolution all dictate a stay of this action pending the resolution of the Summit Action. Once that case is concluded, this case can proceed again and resolve whatever issues may still be present after considering the ruling from the appellate court on similar issues. At a minimum, the issues left for trial in this case could be lessened. Justice would require a stay of this case, and no party would be prejudiced if a stay issued.

19. So that this Court and the parties can continue to track the status of the Summit Action, the parties would request that this Court set a status conference in this case at a time on or near September 1, 2023, so that the status of the Summit Action can be considered and to better determine how this case should proceed.

20. Consistent with Iowa Rule of Civil Procedure 1.910(2), undersigned counsel has conferred with the Defendant IUB, who approves and consents to the remedy requested to stay the proceeding. Defendant's IUB's consent does not constitute approval or consent of Navigator's underlying assertions in support of Navigator's motion. Further, undersigned counsel has conferred with the Intervenor Sierra Club, who also approves and consents to this Motion.

21. Navigator requests that this case be stayed until resolution of the Summit Action, at which point a new trial scheduling order may need to be entered for this case.

WHEREFORE Navigator respectfully requests that this Court grant its Unopposed Motion to Stay These Proceedings pending the resolution of the Summit Action, set a status conference in this case at a time on or near September 1, 2023 so that the status of the cases can

be considered, and for such other and further relief as the Court deems fit under the circumstances.

Respectfully submitted,

/s/ Brian P. Rickert

Brian P. Rickert, AT0006633
Samantha C. Norris, AT0009488
James L. Pray, AT0006318
Caitlin L. Stachon, AT0013902
BROWN, WINICK, GRAVES, GROSS, AND
BASKERVILLE, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510
Telephone: 515-242-2400
Facsimile: 515-283-0231
E-mail: brian.rickert@brownwinick.com
E-mail: Samantha.Norris@brownwinick.com
E-mail: james.pray@brownwinick.com
E-mail: Caitlin.Stachon@brownwinick.com

ATTORNEYS FOR PLAINTIFF NAVIGATOR
HEARTLAND GREENWAY LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 21, 2022, I electronically filed the foregoing with the Clerk of Court by using the Electronic Document Management System, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

/s/ Brooke E. Johnson, Legal Assistant